

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

VINCENT EDWARDS WILLIAMS
Petitioner

vs.

UNITED STATES OF AMERICA
Respondant

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CIVIL ACTION No. 1:06cv2-WHA-WO
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DEFENDANT'S OBJECTIONS TO MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

COMES NOW, the Defendant Vincent E. Williams (hereinafter defendant), in durance vile, appearing through propria persona representation and respectfully files with this Honorable Court his objections to the Magistrate Judge's R & R, to wit:

On December 21, 2005, defendant filed a "Motion to reduce [his] sentence and modify judgment in accordance to Sentencing Reform Act 1984 and 1987 Federal Sentencing Guidelines, Pursuant to 18 U.S.C. § 3582(c)(2).

On December 28, 2005, this Court originally docketed defendant's motion as Doc.# 80 in criminal case no.: 1:95cr234-WHA. However on January 3, 2006, the Clerk docketed it as a civil action under 28 U.S.C. § 2255, civil action no.: 1:06cv2-WHA.

OBJECTIONS

I. Relief under 18 U.S.C. §3582(c)(2)

Defendant contends that §3582(c)(2) does provide a basis to reduce his sentence.

"18 U.S.C. §3582(c) does confer jurisdiction for a district court to modify the terms of a defendant's imprisonment and, to the extent that defendant has argued he is entitled to modification under §3582(c)." See, U.S. v. Castro, 2005 U.S. App. LEXIS 21537 (11th Cir. 2005).

Defendant has alledged that the Sentencing Guidelines has been amended and lowered his sentencing range by the Supreme Court's holding in U.S. v. Booker, 543 U.S. 220 (2005).

Hence, Defendant is properly seeking a modification of his sentence pursuant to §3582(c)(2).

II. Applicability of 28 U.S.C. §2255

Defendant objects to the Magistrate Judge's conclusion that he seeks relief that is appropriate only under 28 U.S.C. §2255.

Castro v. U.S., 157 L.Ed.2d 778 (2003) made it clear that it has to be Petitioner's choice whether his motion is considered a motion under §2255.

Defendant contends his application should only be reviewed under 18 U.S.C. 3582(c)(2)², the statute he invoked opposed to the Court's liberal construction standard of 28 U.S.C. §2255. See, U.S. v. Moreno, 421 F.3d 1217 (11th Cir. 2005)(reviewing guideline challenge on Booker holding pursuant to Title 18 U.S.C. §3582).


Footnote: 2) §3582(c)(2) motion is not a civil post-conviction, but rather a continuation of a criminal case. See, United States v. Fair, 326 F.3d 1317 (11th Cir. 2003).

CONCLUSION

Because Defendant files his motion under 18 U.S.C. §3582(c)(2) and not under 28 U.S.C. §2255, he does not need certification from the Eleventh Circuit Court of Appeals authorizing this Court's consideration of a successive §2255 motion.

Accordingly, the Magistrate Judge's recommendation is in error and his pleading should not be construed as a §2255. Therefore Defendant request this Court to rule on the merits of his pleading.

Respectfully submitted,



Vincent Edwards Williams 09654-002

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the person listed below with a copy of the aforementioned documents by depositing in the U.S. Mail in an envelope having adequate postage to assure delivery.

UNITED STATES DISTRICT COURT
Attn: Clerk of the Court
Post Office Box 711
Montgomery, AL 36101-0711 :Certified Mail

UNITED STATES DISTRICT COURT
HONORABLE CHARLES S. GOODY - Chief U.S. Magistrate Judge
Post Office Box 711
Montgomery, AL 36101-0711 :Regular Mail

This 2nd day of March, 2006



Vincent Edwards Williams

WILLIAMS, VINCENT - 09654-002
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